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Attorneys for Complainant
7

8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 ELMHURST PHARMACY
12 7400 MacArthur Boulevard
Oakland, CA 94605
13 Pharmacy License No. PHY 45683

14 PARAGI PATEL
16897 Robey Drive
15 San Leandro, CA 94578
Registered Pharmacist License No. RPH 49421

16 and

17 MICHAEL HALL
18 584 Castro Street, No. 423
San Francisco, CA 94114
19 Registered Pharmacist License No. RPH 46426

20 Respondents.

Case No. 2686

OAH No. N2005020735

STIPULATION IN SETTLEMENT

**[AS TO RESPONDENTS
ELMHURST PHARMACY and
PARAGI PATEL ONLY]**

21 IT IS HEREBY STIPULATED by and between ELMHURST PHARMACY and
22 PARAGI PATEL, respondents in this proceeding, by and through their attorney Herbert L.
23 Weinberg, and the Board of Pharmacy, Department of Consumer Affairs, State of California, by
24 and through its attorney, Kim M. Settles, Deputy Attorney General, that:

25 1. The accusation in case number 2686 is currently pending against
26 ELMHURST PHARMACY and PARAGI PATEL ("respondent"), said accusation having been
27 filed with the Board of Pharmacy, Department of Consumer Affairs, State of California
28 ("Board").

1 2. Patricia F. Harris, Executive Officer of the Board, is the complainant in
2 the accusation, which was filed in her official capacity.

3 3. Respondents, ELMHURST PHARMACY and PARAGI PATEL are
4 represented by Herbert L. Weinberg, of Van Etten Suzumoto & Becket, in this matter.

5 4. Respondents have fully considered the charges and allegations contained
6 in the Accusation No. 2686 on file with the Board of Pharmacy, Department of Consumer
7 Affairs.

8 5. Respondents are fully aware of their right to a hearing on the allegations
9 contained in the accusation, their right to confront and cross-examine witnesses against them,
10 their right to reconsideration, appeal, and any and all other rights which may be accorded them
11 under the California Administrative Procedure Act (Government Code, § 11500 et seq.) and,
12 with this in mind, freely and voluntarily waives such rights.

13 6. Respondents admit the truth of each and every allegation contained in the
14 first, second, third, fourth, fifth, sixth, seventh and ninth causes of discipline as set forth in the
15 Accusation on file herein (attached hereto as Attachment A), and stipulate that, accordingly,
16 cause for discipline exists against their license, as set forth in the Accusation. Said admissions
17 shall be limited to this administrative proceeding and shall not be used for any other purpose.

18 7. It is acknowledged by the parties that this stipulation constitutes an offer in
19 settlement to the Board of Pharmacy and is not effective until adoption by the Board.

20 8. In the event this stipulation is not adopted by the Board, nothing herein
21 recited shall be construed as a waiver of respondents right to a hearing or as an admission of the
22 truth of any of the statements contained in the accusation.

23 9. Respondents understand that in signing this stipulation rather than
24 contesting the accusation, they are enabling the Board to issue the following order without
25 further legal process.

26 10. Based upon the foregoing recitals, THE PARTIES STIPULATE AND
27 AGREE THAT the Board of Pharmacy shall, without further notice or formal proceeding, issue
28 the following order:

1 **ORDER**

2 IT IS HEREBY ORDERED that Registered Pharmacist License No. RPH 49421
3 issued to respondent PARAGI PATEL is revoked; however, said revocation is stayed and
4 respondent is placed on probation for a period of three (3) years. Pharmacy License No. PHY
5 45683 issued to respondent ELMHURST PHARMACY, is revoked; however, said revocation is
6 stayed and respondent is placed on probation for a period of three (3) years. The following terms
7 and conditions shall apply to the respective probations, as indicated:

8 11. **NO PRECEPTORSHIPS, SUPERVISION OF INTERNS, BEING**
9 **PHARMACIST-IN-CHARGE**

10 Respondent, PARAGI PATEL shall not supervise any intern pharmacist or
11 perform any of the duties of a preceptor. In the event that respondent, PARAGI PATEL is
12 currently the pharmacist-in-charge of a pharmacy, the pharmacy shall retain an independent
13 consultant at its expense who shall be responsible for reviewing pharmacy operations on a
14 quarterly basis for compliance by respondent with state and federal laws and regulations
15 governing pharmacy and for compliance by respondent with the obligations of a pharmacist-in-
16 charge ("PIC"). The consultant shall be a pharmacist licensed by and not on probation to the
17 Board and whose name shall be submitted to the Board for its approval within thirty (30) days of
18 the effective date of this decision. Respondent shall not be a pharmacist-in-charge at more than
19 one pharmacy or at any pharmacy of which she is not the current PIC. The Board may, in the
20 case of an employment change by respondent or for other reasons as deemed appropriate by the
21 Board, bar the respondent from acting as a pharmacist-in-charge.

22 12. **REIMBURSEMENT OF BOARD COSTS**

23 Respondent, PARAGI PATEL shall pay to the Board its cost of investigation and
24 prosecution in the amount of six thousand dollars (\$6,000.00).

25 Respondent shall make said payments quarterly. If respondent fails to pay the
26 costs as specified by the Board on or before the date determined by the Board, the Board shall,
27 without affording the respondent notice and the opportunity to be heard, revoke probation and
28 carry out the disciplinary order that was stayed.

1 13. **NO OWNERSHIP OF PREMISES**

2 Respondent, PARAGI PATEL shall not acquire any new ownership, legal or
3 beneficial interest nor serve as a manager, administrator, member, officer, director, trustee,
4 associate, or partner of any additional business, firm, partnership, or corporation licensed by the
5 board. If respondent currently owns or has any legal or beneficial interest in, or serves as a
6 manager, administrator, member, officer, director, associate, or partner of any business, firm,
7 partnership, or corporation currently or hereinafter licensed by the board, respondent may
8 continue to serve in such capacity or hold that interest, but only to the extent of that position or
9 interest as of the effective date of this decision.

10 14. **OBEY ALL LAWS**

11 Respondent shall obey all state and federal laws and regulations substantially
12 related to or governing the practice of pharmacy.

13 Respondent shall report any of the following occurrences to the board, in writing,
14 within 72 hours of such occurrence:

- 15 a. An arrest or issuance of a criminal complaint for violation of any provision of the
16 Pharmacy Law, state and federal food and drug laws, or state and federal
17 controlled substances laws.
- 18 b. A plea of guilty or nolo contendere in any state or federal criminal proceeding to
19 any criminal complaint, information or indictment.
- 20 c. A conviction of any crime.
- 21 d. Discipline, citation, or other administrative action filed by any state and federal
22 agency which involves respondent's registered pharmacist license or which is
23 related to the practice of pharmacy or the manufacturing, obtaining, handling or
24 distribution or billing or charging for of any drug, device or controlled
25 substance.

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1 15. **REPORTING TO THE BOARD**

2 Respondent shall report to the board quarterly. The report shall be made either
3 in person or in writing, as directed. Respondent shall state under penalty of perjury whether
4 there has been compliance with all the terms and conditions of probation. If the final
5 probation report is not made as directed, probation shall be extended automatically until such
6 time as the final report is made and accepted by the board.

7 16. **INTERVIEW WITH THE BOARD**

8 Upon receipt of reasonable notice, respondent shall appear in person for
9 interviews with the board upon request at various intervals at a location to be determined by
10 the board. Failure to appear for a scheduled interview without prior notification to board staff
11 shall be considered a violation of probation.

12 17. **COOPERATION WITH BOARD STAFF**

13 Respondent shall cooperate with the board's inspectional program and in the
14 board's monitoring and investigation of respondent's compliance with the terms and conditions
15 of her probation. Failure to comply shall be considered a violation of probation.

16 18. **CONTINUING EDUCATION**

17 Respondent shall provide evidence of efforts to maintain skill and knowledge
18 as a pharmacist as directed by the board.

19 19. **NOTICE TO EMPLOYERS**

20 Respondent shall notify all present and prospective employers of the decision
21 in Accusation number 2686 and the terms, conditions and restrictions imposed on respondent
22 by the decision. Within 30 days of the effective date of this decision, and within 15 days of
23 respondent undertaking new employment, respondent shall cause her direct supervisor,
24 pharmacist-in-charge and/or owner to report to the board in writing acknowledging the
25 employer has read the decision in Accusation number 2686.

26 If respondent works for or is employed by or through a pharmacy employment
27 service, respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
28 every pharmacy of the terms and conditions of the decision in Accusation number 2686 in

1 advance of the respondent commencing work at each pharmacy.

2 "Employment" within the meaning of this provision shall include any full-time, part-
3 time, temporary, relief or pharmacy management service as a pharmacist, whether the
4 respondent is considered an employee or independent contractor.

5 20. **PROBATION MONITORING COSTS**

6 Respondent shall pay the costs associated with probation monitoring as
7 determined by the board each and every year of probation. Such costs shall be payable to the
8 board at the end of each year of probation. Failure to pay such costs shall be considered a
9 violation of probation.

10 21. **STATUS OF LICENSE**

11 Respondent shall, at all times while on probation, maintain an active current
12 license with the board, including any period during which suspension or probation is tolled.

13 If respondent's license expires or is canceled by operation of law or otherwise,
14 upon renewal or reapplication, respondent's license shall be subject to all terms and conditions
15 of this probation not previously satisfied.

16 22. **LICENSE SURRENDER WHILE ON PROBATION**

17 Following the effective date of this decision, should respondent cease practice
18 due to retirement or health, or be otherwise unable to satisfy the terms and conditions of
19 probation, respondent may tender her license to the board for surrender. The board shall have
20 the discretion whether to grant the request for surrender or take any other action it deems
21 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
22 will no longer be subject to the terms and conditions of probation.

23 Upon acceptance of the surrender, respondent shall relinquish her pocket license
24 to the board within 10 days of notification by the board that the surrender is accepted.
25 Respondent may not reapply for any license from the board for three years from the effective
26 date of the surrender. Respondent shall meet all requirements applicable to the license sought
27 as of the date the application for that license is submitted to the board.

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1 23. **NOTIFICATION OF EMPLOYMENT/MAILING ADDRESS**

2 **CHANGE**

3 Respondent shall notify the board in writing within 10 days of any change of
4 employment. Said notification shall include the reasons for leaving and/or the address of the
5 new employer, supervisor or owner and work schedule if known. Respondent shall notify the
6 board in writing within 10 days of a change in name, mailing address or phone number.

7 24. **TOLLING OF PROBATION**

8 Should respondent, regardless of residency, for any reason cease practicing
9 pharmacy for a minimum of forty hours per calendar month in California, respondent must
10 notify the board in writing within 10 days of cessation of the practice of pharmacy or the
11 resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction
12 of the probation period. It is a violation of probation for respondent's probation to remain
13 tolled pursuant to the provisions of this condition for a period exceeding three years.

14 "Cessation of practice" means any period of time exceeding 30 days in which
15 respondent is not engaged in the practice of pharmacy as defined in Section
16 4052 of the Business and Professions Code.

17 25. **NOTICE TO EMPLOYEES**

18 Respondent shall, upon or before the effective date of this decision, ensure that
19 all employees involved in permit operations are made aware of all the terms and conditions of
20 probation, either by posting a notice of the terms and conditions, circulating such notice, or
21 both. If the notice required by this provision is posted, it shall be posted in a prominent place
22 and shall remain posted throughout the probation period. Respondent shall ensure that any
23 employees hired or used after the effective date of this decision are made aware of the terms
24 and conditions by positing a notice, circulating a notice, or both.

25 "Employees" as used in this provision includes all full-time, part-time,
26 temporary and relief employees and independent contractors employed or hired
27 at any time during probation.

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26. **OWNERS AND OFFICERS: KNOWLEDGE OF THE LAW**

Respondent shall provide, within 30 days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of 10% or more of the interest in respondent or respondent's stock, and any officer, stating said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy.

27. **VIOLATION OF PROBATION**

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

28. **COMPLETION OF PROBATION**

Upon successful completion of probation, respondent's license will be fully restored.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Registered Pharmacist License No. RPH 49421. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 4/12/05

B. M. Patel
PARAGI PATEL
Respondent

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacy License No. PHY 45683. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 4/12/05

ELMHURST PHARMACY

By: B. M. Patel

PARAGI PATEL, Owner
Respondent

I have read and fully discussed with respondents PARAGI PATEL and ELMHURST PHARMACY, the terms and conditions and the other matters contained in this Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5/2/05

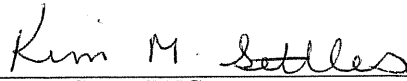
Herbert L. Weinberg
HERBERT L. WEINBERG
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby
respectfully submitted for consideration by the Board of Pharmacy.

DATED: 5/9/05.

BILL LOCKYER, Attorney General
of the State of California


KIM M. SETTLES
Deputy Attorney General

Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ELMHURST PHARMACY
7400 MacArthur Boulevard
Oakland, CA 94605
Pharmacy License No. PHY 45683

PARAGI PATEL
16897 Robey Drive
San Leandro, CA 94578
Registered Pharmacist License No. RPH 49421

and

MICHAEL HALL
584 Castro Street, No. 423
San Francisco, CA 94114
Registered Pharmacist License No. RPH 46426

Respondents.

Case No. 2686

OAH No. N2005020735

**[AS TO RESPONDENTS
ELMHURST PHARMACY and
PARAGI PATEL ONLY]**

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 20, 2005.

It is so ORDERED June 20, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


WILLIAM POWERS
Board Vice President

Exhibit A
Accusation No. 2686

1 BILL LOCKYER, Attorney General
of the State of California
2 FRED A. SLIMP II, State Bar No. 118693
Deputy Attorney General
3 California Department of Justice
1515 Clay Street, 20th Floor ~ P.O. Box 70550
4 Oakland, CA 94612-0550
Telephone: (510) 622-2117
5 Facsimile: (510) 622-2121

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *21800*

12 ELMHURST PHARMACY
7400 MacArthur Boulevard
13 Oakland, CA 94605

ACCUSATION

14 Pharmacy License No. PHY 45683,

15 PARAGI PATEL
16897 Robey Drive
16 San Leandro, CA 94578

17 Registered Pharmacist License No. RPH 49421,

18 and

19 MICHAEL HALL
584 Castro Street, No. 423
20 San Francisco, CA 94114

21 Registered Pharmacist License No. RPH 46426,

22 Respondents.

23
24 Complainant alleges:

25 **PARTIES**

26 1. Patricia F. Harris (Complainant) brings this Accusation solely in her official
27 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

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2. On or about February 7, 2002, the Board of Pharmacy issued Pharmacy License Number PHY 45683 to Elmhurst Pharmacy (respondent Pharmacy or Elmhurst). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on February 1, 2004, unless renewed.

3. On or about May 1, 1997, the Board of Pharmacy issued Registered Pharmacist License Number RPH 49421 to Paragi Patel (respondent Patel or Patel). The Registered Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2005, unless renewed. Respondent Patel was the designated pharmacist-in-charge at respondent Pharmacy at all times relevant to the charges brought herein.

4. On or about August 13, 1993, the Board of Pharmacy issued Registered Pharmacist License Number RPH 46426 to Michael Hall (respondent Hall or Hall). The Registered Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2004, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 4301(f) of the Code provides in pertinent part that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which includes, but is not limited to, the commission of any act involving dishonesty, whether the act is committed in the course of relations as a licensee or otherwise.

7. Section 4301(g) of the Code provides in pertinent part that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which includes, but is not limited to, knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

8. Section 4301(j) of the Code provides in pertinent part that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which includes, but is not limited to the violation of any of the statutes of this state or of the United States

1 regulating controlled substances and dangerous drugs.

2 9. Section 4301(o) of the Code provides in pertinent part that the Board shall take
3 action against any holder of a license who is guilty of unprofessional conduct, which includes,
4 but is not limited to, violating or attempting to violate, directly or indirectly, or assisting
5 in or abetting the violation of or conspiring to violate any provision or term of this chapter or of
6 the applicable federal and state laws and regulations governing pharmacy, including regulations
7 established by the board.

8 10. Section 4022 of the Code provides in pertinent part that "dangerous drug"
9 means any drug unsafe for self-use of any other drug that by federal or state law can be lawfully
10 dispensed only on prescription.

11 11. Section 4081(a) of the Code provides in pertinent part that all records of
12 manufacture and of sale, acquisition, or disposition of dangerous drugs shall be at all times
13 during business hours open to inspection by authorized officers of the law, and shall be preserved
14 for at least three years from the date of making.

15 12. Section 4113(a) of the Code provides in pertinent part that every pharmacy shall
16 designate a pharmacist-in-charge and, within 30 days thereof, shall notify the Board in writing of
17 the identity and license number of that pharmacist and the date he or she was designated.

18 13. Section 4113(b) of the Code provides in pertinent part that the pharmacist-
19 in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and
20 regulations pertaining to the practice of pharmacy.

21 14. Section 4113(c) of the Code provides in pertinent part that every pharmacy
22 shall notify the Board within 30 days of the date when a pharmacist ceases to be a pharmacist-
23 in-charge.

24 15. Section 4115(f) of the Code provides in pertinent part that the performance of
25 duties by a pharmacy technician shall be under the direct supervision and control of a pharmacist,
26 that the pharmacist on duty shall be directly responsible for the conduct of a pharmacy
27 technician, that a pharmacy technician may perform specified permissible duties only under the
28 immediate, personal supervision and control of a pharmacist, that any pharmacist responsible for

1 a pharmacy technician shall be on the premises at all times, and that the pharmacy technician
2 shall be within the pharmacist's view.

3 16. Section 4115(g) of the Code provides in pertinent part that a pharmacy with only
4 one pharmacist shall have no more than one pharmacy technician performing specified
5 permissible tasks, and that the ratio of pharmacy technicians performing specified permissible
6 tasks to any additional pharmacist shall not exceed 2:1.

7 17. Section 4116(a) of the Code provides in pertinent part that no person other than
8 a pharmacist, intern pharmacist, authorized law officer, or person authorized to prescribe shall be
9 permitted in that area, place, or premises wherein controlled substances or dangerous drugs
10 are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged.

11 18. Section 111255 of the Health & Safety Code provides in pertinent part that any
12 drug is adulterated if it has been produced, prepared, packed, or held under conditions whereby
13 it may have been contaminated with filth, or whereby it may have been rendered injurious to health.

14 19. Section 111295 of the Health & Safety Code provides in pertinent part that
15 it is unlawful for any person to manufacture, sell, deliver, hold or offer for sale any drug that
16 is adulterated.

17 20. Title 16, California Code of Regulations, section 1714(d) ("16 CCR § 1714(d)")
18 provides in pertinent part that each pharmacist while on duty shall be responsible for the security
19 of the prescription department, including provisions for effective control against theft or diversion
20 of dangerous drugs or devices, and records for such drugs and devices.

21 21. Section 125.3 of the Code states in pertinent part that the Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations
23 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 DRUGS

26 22. Seroquel, a trade name for the chemical compound quetiapine fumarate, is an oral
27 medication for the treatment of schizophrenia in adults and a dangerous drug within the meaning
28 of Code section 4022.

1 23. Respondents Elmhurst Pharmacy, Paragi Patel and Michael Hall are guilty of
2 unprofessional conduct as more particularly set forth herein below.

3 *Respondents Pharmacy and Patel*

4 FIRST CAUSE FOR DISCIPLINE

5 (Dishonesty)

6 (Bus. & Prof. Code § 4301(f))

7 24. Between April 1, 2002, and June 30, 2002, on multiple occasions the dates of
8 which are known to respondents Pharmacy and Patel, but unknown to complainant, respondents
9 Pharmacy and Patel rebilled, and thereby overbilled, Medi-Cal in the amount of \$23,878.40
10 for prescriptions of the dangerous drug Seroquel previously delivered to physician W. S.¹
11 which were returned to respondents and subsequently reused and sold again and redelivered
12 to physician W. S. for distribution to other patients, without credit to Medi-Cal therefor.

13 25. The conduct of respondents Pharmacy and Patel set forth in paragraph 24,
14 above, constitutes dishonesty and therefore unprofessional conduct within the meaning of
15 Code section 4301(f).

16 SECOND CAUSE FOR DISCIPLINE

17 (Making of Document with Misrepresentation)

18 (Bus. & Prof. Code § 4301(g))

19 26. Complainant realleges paragraph 24, above, and incorporates it herein by
20 reference as if fully set forth at this point.

21 27. In conjunction with the rebilling for prescriptions of used Seroquel previously
22 delivered to physician W. S. as set forth in paragraph 24, above, respondents Pharmacy and Patel
23 executed Medi-Cal reimbursement claims that falsely represented the status of the Seroquel
24 rebilled for as not previously used, delivered or billed for.

25 28. The conduct of respondents Pharmacy and Patel set forth in paragraph 27,
26 above, constitutes the knowing making of documents that falsely represent the existence of facts
27 and therefore unprofessional conduct within the meaning of Code section 4301(g).

28 1. The full names of all persons referred to herein will be made available to respondents
upon a request for discovery.

1 THIRD CAUSE FOR DISCIPLINE

2 (Violation of Drug Statutes)

3 (Bus. & Prof. Code § 4301(j))

4 29. Complainant realleges paragraph 24, above, and incorporates it herein by
5 reference as if fully set forth at this point.

6 30. In conjunction with the redelivery of used Seroquel as set forth in paragraph 24,
7 above, respondents Pharmacy and Patel held, offered for sale, sold and delivered said dangerous
8 drug previously held by physician W. S. under conditions whereby it may have been contaminated
9 with filth, or whereby it may have been rendered injurious to health.

10 31. The conduct of respondents Pharmacy and Patel set forth in paragraph 30, above,
11 constitutes a violation of Health & Safety Code section 111295 and therefore unprofessional
12 conduct within the meaning of Code section 4301(j).

13 FOURTH CAUSE FOR DISCIPLINE

14 (Failure to Maintain Records)

15 (Bus. & Prof. Code § 4081(a), 4301(j))

16 32. On or about February 9, 2002, February 20, 2002, March 4, 2002, and
17 August 9, 2002, respondents Pharmacy and Patel made five (5) payments for shipments of
18 dangerous drugs received from drug supplier "Hwave" in the amounts of \$4,935.15, \$16,533.51,
19 \$19,124.56, \$6,391.00, and \$6,500.00. Respondents Pharmacy and Patel failed to produce
20 invoices from supplier "Hwave" corresponding to the above payments when requested to do so
21 by a Board inspector on February 27, 2003.

22 33. The conduct of respondents Pharmacy and Patel in failing to maintain and produce
23 invoices for shipments of dangerous drugs from supplier "Hwave" when requested to do so
24 on February 27, 2003, constitutes violation of Code section 4081(a) and therefore unprofessional
25 conduct within the meaning of Code section 4301(j).

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FIFTH CAUSE FOR DISCIPLINE
(Technicians Not Subject to Visual Supervision)
(Bus. & Prof. Code § 4115(f))

34. On or about February 27, 2003, inspector Ralph. S. Orlandella, Pharm.D., (Orlandella) inspected the premises of respondent pharmacy. Orlandella observed that respondent pharmacy maintained a nursing home dispensing area within the pharmacy proper but outside the restricted licensed area. Controlled substances and dangerous drugs were maintained and/or prepared and/or packaged for dispensing in the nursing home dispensing area. The said nursing home dispensing area lacks a window or other means for a pharmacist to maintain visual supervision of persons performing tasks within the nursing home dispensing area.

35. The conduct of respondents Pharmacy and Patel in maintaining the nursing home dispensing area without providing for direct visual supervision by a pharmacist of activities performed therein constitutes a violation of Code section 4115(f) and therefore unprofessional conduct within the meaning of Code sections 4301(o) (violation of chapter).

Respondents Pharmacy, Patel and Hall

SIXTH CAUSE FOR DISCIPLINE
(Improper Pharmacist/Technician Ratio)
(Bus. & Prof. Code § 4115(g))

36. Complainant realleges paragraph 34, above, and incorporates it herein by reference as if fully set forth at this point.

37. Orlandella also observed during his inspection of respondent Pharmacy on February 27, 2003 that respondent Hall was the only pharmacist on duty and that respondent Hall was supervising five (5) pharmacy technicians and one (1) pharmacy clerk.

38. The conduct of respondents Pharmacy, Patel and Hall in allowing respondent Hall to supervise five (5) pharmacy technicians as set forth in paragraph 37, above, constitutes a violation of Code section 4115(g) and therefore unprofessional conduct within the meaning of Code section 4301(o) (violation of chapter).

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SEVENTH CAUSE FOR DISCIPLINE
(Nonpharmacists in Secure Area without Pharmacist Present)
(Bus. & Prof. Code § 4116(a))

39. Complainant realleges paragraph 34, above, and incorporates it herein by reference as if fully set forth at this point.

40. Orlandella also observed during his inspection of respondent pharmacy on February 27, 2003, that three (3) non-professional staff members were present in the nursing home dispensing area without a pharmacist being present at the same time.

41. The conduct of respondents Pharmacy, Patel and Hall in permitting unauthorized non-professional staff to be in an area, place, or premises wherein controlled substances or dangerous drugs are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged without a pharmacist being present as set forth in paragraph 40, above, constitutes a violation of Code section 4116(a) and therefore unprofessional conduct within the meaning of Code section 4301(o) (violation of chapter).

EIGHTH CAUSE FOR DISCIPLINE
(Violation of Drug Regulation)
(16 CCR § 1714(d), Bus. & Prof. Code § 4301(o))

42. Complainant realleges paragraph 34, above, and incorporates it herein by reference as if fully set forth at this point.

43. The said nursing home dispensing area is a large auditorium-size area with an entrance doorway separate from the entrances to the pharmacy and the licensed area and also contains a fire exit at its rear. During his inspection of respondent pharmacy on February 27, 2003, Orlandella also noted that the separate doorway to the nursing home dispensing area was allowed to remain unlocked and that controlled substances or other dangerous drugs or devices were removable via the fire exit without observation by pharmacist staff, thus placing controlled substances and/or dangerous drugs or devices in an unsecured condition with high risk of theft.

44. The conduct of respondents Pharmacy, Patel and Hall in failing to secure the nursing home dispensing area and creating a high risk of theft thereby constitutes a violation of 16 CCR § 1714(d) and therefore unprofessional conduct within the meaning of Code section 4301(o) (violation of Board regulations).

NINTH CAUSE FOR DISCIPLINE
(Failure to Notify re Pharmacist in Charge)
(Bus. & Prof. Code §§ 4113(a), (c))

45. When respondent Patel ceased to be pharmacist-in-charge at respondent Pharmacy on or about February 5, 2002, respondents Pharmacy and Patel failed to notify the Board within 30 days thereof as required by Code section 4113(c). When respondent Hall became pharmacist-in-charge at respondent Pharmacy on or about February 6, 2002, respondents Pharmacy, Patel and Hall failed to notify the Board within 30 days thereof as required by Code section 4113(a). When respondent Patel again became pharmacist-in-charge at respondent Pharmacy on or about February 21, 2002, respondents Pharmacy and Patel failed to notify the Board within 30 days thereof as required by Code section 4113(a).

46. The conduct of respondents Pharmacy, Patel and Hall in failing to provide the Board with required notice as set forth in paragraph 45, above, constitutes violation of Code sections 4113(a) or 4113(c) and therefore unprofessional conduct within the meaning of Code section 4301(o) (violation of chapter).

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged and that, following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Pharmacy License Number PHY 45683 issued to
5 Elmhurst Pharmacy;

6 2. Revoking or suspending Registered Pharmacist License Number RPH 49421
7 issued to Paragi Patel;

8 3. Revoking or suspending Registered Pharmacist License Number RPH 46426
9 issued to Michael Hall;

10 4. Ordering Elmhurst Pharmacy, Paragi Patel and Michael Hall to pay the Board
11 of Pharmacy the reasonable costs of the investigation and enforcement of this case pursuant to
12 Code section 125.3; and

13 5. Taking such other and further action as may be deemed necessary or proper.
14

15 DATED: 11/6/03

16 P. F. Harris
17 PATRICIA F. HARRIS
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California

22 Complainant
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